IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9824 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATHABHAI RANCHHODBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioner

MR. K.T. DAVE, AGP, for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/06/2000

ORAL JUDGEMENT

The petitioner is a freedom fighter who applied for getting freedom fighter's pension on 29.10.1980 but he is granted such pension only with effect from 1.4.1989 by the State Government. The petitioner has, therefore, filed the petition for arrears of pension.

2. It appears that the petitioner's application was earlier not granted on the ground that the petitioner was not satisfying the income criteria. At that income criteria of Rs. 10,000/- was prescribed so that persons getting income more than Rs. 10,000/- were not considered eligible for getting freedom fighter's pension. It was the case of the petitioner that his income was only Rs. 4000/- and therefore, he was well within the income criteria then prescribed by the Government but the concerned Circle Officer who was processing the petitioner's application expected some monetary benefit which the petitioner declined to give and therefore, only on account of the report of the said Circle Officer, the Collector by his communication dated 2.8.1982 (Annexure-E) rejected the petitioner's application. Subsequently, when the income criteria came to be removed, the petitioner again submitted an application on 18.10.1985 (Annexure-G) for reconsideration. Ultimately, the Government accepted the said application and started paying the petitioner freedom fighter's pension with effect from 1.4.1989 from its discretionary funds (Annexure-I). Hence this petition for getting arrears of pension from the date of the original application.

3. There is no affidavit-in-reply denying the averments made in the petition especially the averment regarding reasons for not granting the petitioner's application earlier.

4. At the time of hearing, the learned counsel for the petitioner has relied on a decision of the Apex Court in the case of Mukund Lal Bhandari Vs. Union of India reported in AIR 1993 SC 2127 and contended that whatever may be the date on which the claimants make application, the benefit should be made available to them from the date of entitlement.

5. Having heard learned counsel for the parties, it appears that there is some force in the submission made on behalf of the petitioner. In Mukund Lal Bhandari's case (supra) the Hon'ble Supreme Court has held that benefit of pension to freedom fighter would flow from the date of the application. The petitioner had applied for freedom fighter's pension on 29.10.1980 and when the petitioner is found entitled to pension as per the Government decision dated 21.3.1989 (Annexure-I), the principle laid down in the aforesaid judgement of the Apex Court would be applicable to the petitioner's case.

6. In view of the above discussion, the petition is allowed. The respondent is directed to consider the petitioner's case for freedom fighter's pension with effect from 1.11.1980 (i.e. 29.10.1980 being the date of original application) and when the petitioner has been granted pension, there does not appear to be any reason for denying arrears of pension for the period 1.11.1980 to 31.3.1989 to the petitioner. The respondent is directed to consider the case of the petitioner for grant of arrears of freedom fighter's pension for the aforesaid period. This direction shall be complied with, within a period of three months from the date of receipt of a certified copy of the order or writ of this court whichever is earlier.

7. Since there is delay in preferring the petition, no direction is given for paying any interest or costs to the petitioner.

8. Rule is made absolute to the above extent with no order as to costs.

(M.S. SHAH, J)

(pkn)